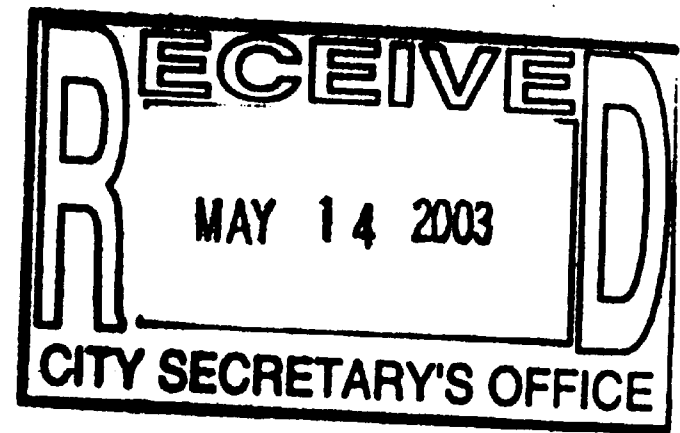


May 13, 2003

The Honorable Randy Sims  
Brazos County Judge  
300 East 26<sup>th</sup> Street  
Suite 114  
Bryan, TX 77803



The Honorable Ron Silvia  
Mayor of College Station  
1101 Texas Avenue  
College Station, TX 77840

The Honorable Jay Don Watson  
Mayor of Bryan  
P.O. Box 1000  
Bryan, TX 77805

Dear Sirs,

Thank you for meeting with us recently to discuss the current late licensing of alcohol sales. As a follow up to that meeting, an opinion by the Texas Attorney General has already been issued on the question allowing county or municipal governing bodies to "customize" the Texas Alcoholic Beverage Code allowing late hours.

The following summary outlines the concepts and furthermore, a copy of the 1986 ruling itself is enclosed:

**A LOCAL GOVERNMENT MAY NOT ALLOW THE LATE SALE OF  
MIXED BEVERAGES AT HOURS OTHER THAN THOSE  
PRESCRIBED IN THE TEXAS ALCOHOLIC BEVERAGE CODE**

Section 105.03 of the Texas Alcoholic Beverage Code (the "Code") governs the hours at which mixed beverages may be sold. Normally, a permittee may not sell mixed beverages after 1:00 a.m. on Sundays and midnight on other days. Code § 105.03(b). Subsections (c) and (d) of the statute provide, however:

- (c) In a county having a population of 500,000 or more, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day.
- (d) In a county having a population of less than 500,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverage late hour permit:

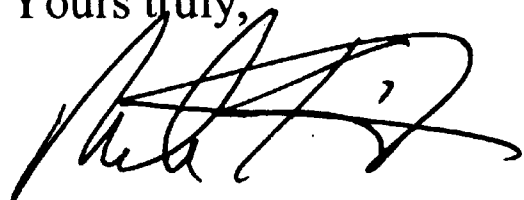
- (1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissions' court; and
- (2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

The question presented is whether, under Section 105.03(d), a local government may adopt an ordinance or resolution allowing the sale of mixed beverages between midnight and 1:00 a.m. but prohibiting such sales after 1:00 a.m. No local government may do this. The extended hours, if adopted at all under Subsection (d), must run until 2:00 a.m. Local governments may regulate the sale of alcoholic beverages only as the Code allows. Code §§ 1.06, 109.57(a), (b). In particular, the sale of mixed beverages must only be at the hours specified in Section 105.03. Code § 105.03(a). No statute allows a local government to authorize extended sales running until 1:00 a.m.

In a similar instance, the Attorney General issued an opinion that a county with a population of less than 500,000 could not, under Section 105.03(d)(1), authorize the sale of mixed beverages until 2:00 a.m. on some days of the week but not others. The statute required that the extended hours must be authorized on all days or not at all. OP. TEX. ATTY GEN No. JM-577 (1986). By the same cogent reasoning, extended hours under Section 105.03(d) must run until 2:00 a.m. if extended hours are hours adopted at all. The extended hours may not be cut short at an earlier time that the statute prescribes.

After your review, we respectfully request another luncheon merely to learn your thoughts about a course of action.

Yours truly,



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Yours truly,



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